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Honorable Rosanna Malouf Peterson

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 CINDY DICKSON, an Individual,

No. 4:20-cv-05014-RMP

11 Plaintiff,

STIPULATED PROTECTIVE ORDER

12 vs.

DATE OF HEARING:
WEDNESDAY, JUNE 3, 2020

13 SKYWEST AIRLINES, INC., a Utah
14 Corporation; and DOES 1-10,

WITHOUT ORAL ARGUMENT

15 Defendants.

16 **1. PURPOSES AND LIMITATIONS**

17 Discovery in this action will involve production of confidential, proprietary, or
18 private information for which special protection may be warranted. Accordingly, the
19 parties hereby stipulate to and petition this Court to enter the following Stipulated
20 Protective Order. The parties acknowledge that this agreement is consistent with Rule
21 26(c) of the Federal Rules of Civil Procedure. It does not confer blanket protection on all
22 disclosures or responses to discovery. The protection it affords from public disclosure
23

1 and use extends only to the limited information or items that are entitled to confidential
 2 treatment under the applicable legal principles, and it does not presumptively entitle
 3 parties to file confidential information under seal.
 4

5 **2. “CONFIDENTIAL” MATERIAL**

6 “Confidential” material shall include, but not necessarily be limited to, the
 7 following documents and tangible things produced or otherwise exchanged: Any
 8 information, material or document a person or entity in good faith believes constitutes or
 9 reveals (1) a trade secret or other confidential research, development, financial,
 10 proprietary, or commercial information, (2) a person’s medical records and billing
 11 records, (3) a person’s employment records, education, tax records, and other documents
 12 that include confidential and/or sensitive personal information, (4) any information
 13 copied or extracted from confidential material; (5) all copies, excerpts, summaries, or
 14 compilations of confidential material; and (6) any testimony, conversations, or
 15 presentations by parties or their counsel that might reveal confidential material. However,
 16 the protections conferred by this agreement do not cover information that is in the public
 17 domain or becomes part of the public domain through trial or otherwise.
 18

20 **3. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

21 3.1 Basic Principles. A receiving party may use confidential material that is
 22 disclosed or produced by another party or by a non-party in connection with this case
 23 only for prosecuting, defending, or attempting to settle this litigation. Confidential
 24

1 material may be disclosed only to the categories of persons and under the conditions
 2 described in this agreement. Confidential material must be stored and maintained by a
 3 receiving party at a location and in a secure manner that ensures that access is limited to
 4 the persons authorized under this agreement.
 5

6 3.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 7 ordered by the court or permitted in writing by the designating party, a receiving party
 8 may disclose any confidential material only to:

- 9 (a) the receiving party's counsel of record in this action, as well as
 10 employees and independent contractor attorneys and office staff of
 11 counsel to whom it is reasonably necessary to disclose the information
 12 for this litigation;
- 13 (b) the officers, directors, and employees (including in-house counsel) of
 14 the receiving party to whom disclosure is reasonably necessary for
 15 this litigation, unless the parties agree that a particular document or
 16 material produced is for Attorney's Eyes Only and is so designated;
- 17 (c) experts and consultants to whom disclosure is reasonably necessary
 18 for this litigation and who have signed the "Acknowledgment and
 19 Agreement to Be Bound" (Exhibit A);
- 20 (d) the court, court personnel, and court reporters and their staff;
- 21 (e) copy or imaging services retained by counsel to assist in the
 22 duplication of confidential material, provided that counsel for the
 23 party retaining the copy or imaging service instructs the service not to
 24 disclose any confidential material to third parties and to immediately
 25 return all originals and copies of any confidential material;
- 26 (f) during their depositions, witnesses in the action to whom disclosure is
 27 reasonably necessary and who have signed the "Acknowledgment and
 28 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the

1 designating party or ordered by the court. Pages of transcribed
 2 deposition testimony or exhibits to depositions that reveal confidential
 3 material must be separately bound by the court reporter and may not
 4 be disclosed to anyone except as permitted under this agreement;

5 (g) the author or recipient of a document containing the information or a
 6 custodian or other person who otherwise possessed or knew the
 7 information.

8 3.3 Filing Confidential Material. Before filing confidential material or
 9 discussing or referencing such material in court filings, the filing party shall confer with
 10 the designating party to determine whether the designating party will remove the
 11 confidential designation, whether the document can be redacted, or whether a motion to
 12 seal or stipulation and proposed order is warranted.

13 **4. DESIGNATING PROTECTED MATERIAL**

14 4.1 Exercise of Restraint and Care in Designating Material for Protection. Each
 15 party or non-party that designates information or items for protection under this
 16 agreement must take care to limit any such designation to specific material that qualifies
 17 under the appropriate standards. The designating party must designate for protection only
 18 those parts of material, documents, items, or oral or written communications that qualify,
 19 so that other portions of the material, documents (including, but not limited to, answers to
 20 interrogatories), items, or communications for which protection is not warranted are not
 21 swept unjustifiably within the ambit of this agreement.

22 If it comes to a designating party's attention that the information or items that it

1 designated for protection do not qualify for protection, the designating party must notify
 2 all other parties that it is withdrawing the designation.

3 4.2 Manner and Timing of Designations. Except as otherwise provided in this
 4 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
 5 or ordered, disclosure or discovery material that qualifies for protection under this
 6 agreement must be clearly so designated before or when the material is disclosed or
 7 produced.

- 8 (a) Information in documentary form: (e.g., paper or electronic
 9 documents and deposition exhibits, but excluding transcripts of
 10 depositions or other pretrial or trial proceedings), the designating
 11 party must affix the word “CONFIDENTIAL” to each page that
 12 contains confidential material. If only a portion or portions of the
 13 material on a page qualifies for protection, the producing party also
 14 must clearly identify the protected portion(s) (e.g., by making
 15 appropriate markings in the margins).
- 16 (b) Testimony given in deposition or in other pretrial or trial proceedings:
 17 the parties must identify on the record, during the deposition, hearing,
 18 or other proceeding, all protected testimony, without prejudice to their
 19 right to so designate other testimony after reviewing the transcript.
 20 Any party or non-party may, within fifteen days after receiving a
 21 deposition transcript, designate portions of the transcript, or exhibits
 thereto, as confidential.
- 22 (c) Other tangible items: the producing party must affix in a prominent
 23 place on the exterior of the container or containers in which the
 24 information or item is stored the word “CONFIDENTIAL.” If only a
 25 portion or portions of the information or item warrant protection, the
 producing party, to the extent practicable, shall identify the protected
 portion(s).

22 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
 23 to designate qualified information or items does not, standing alone, waive the

1 designating party's right to secure protection under this agreement for such material.

2 Upon timely correction of a designation, the receiving party must make reasonable efforts
3 to ensure that the material is treated in accordance with the provisions of this agreement.
4

5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 5.1 Timing of Challenges. Any party or non-party may challenge a designation
7 of confidentiality at any time. Unless a prompt challenge to a designating party's
8 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
9 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
10 party does not waive its right to challenge a confidentiality designation by electing not to
11 mount a challenge promptly after the original designation is disclosed.
12

13 5.2 Meet and Confer. The parties must make every attempt to resolve any
14 dispute regarding confidential designations without court involvement. Any motion
15 regarding confidential designations or for a protective order must include a certification,
16 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
17 meet and confer conference with other affected parties in an effort to resolve the dispute
18 without court action. The certification must list the date, manner, and participants to the
19 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
20 conference.
21

22 5.3 Judicial Intervention. If the parties cannot resolve a challenge without court
23 intervention, the designating party may file and serve a motion to retain confidentiality
24

1 under Local Civil Rule 7. The burden of persuasion in any such motion shall be on the
 2 designating party. Frivolous challenges, and those made for an improper purpose (e.g., to
 3 harass or impose unnecessary expenses and burdens on other parties) may expose the
 4 challenging party to sanctions. All parties shall continue to maintain the material in
 5 question as confidential until the court rules on the challenge.

6 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 OTHER LITIGATION**

7 If a party is served with a subpoena or a court order issued in other litigation that
 8 compels disclosure of any information or items designated in this action as
 9 “CONFIDENTIAL,” that party must:

- 10 (a) notify the designating party in writing and include a copy of the subpoena or
 11 court order;
- 12 (b) notify in writing the party who caused the subpoena or order to issue in the
 13 other litigation that some or all of the material covered by the subpoena or
 14 order is subject to this agreement. Such notification shall include a copy of
 15 this agreement; and
- 16 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 17 the designating party whose confidential material may be affected.

18 **7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
 20 confidential material to any person or in any circumstance not authorized under this
 21 agreement, the receiving party must immediately: (a) notify in writing the designating
 22 party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized
 23 party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized
 24 party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized

1 copies of the protected material; (c) inform the person or persons to whom unauthorized
2 disclosures were made of all the terms of this agreement; and (d) request that such person
3 or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached
4 hereto as Exhibit A.

5

6 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL**

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of
10 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
11 This provision is not intended to modify whatever procedure may be established in an e-
12 discovery order or agreement that provides for production without prior privilege review.
13 Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502.

14

15 **9. NON-TERMINATION AND RETURN OF DOCUMENTS**

16 Within 60 days after the termination of this action, including all appeals, each
17 receiving party must return all confidential material to the producing party, including all
18 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
19 appropriate methods of destruction. Counsel for the parties may retain copies of such
20 documents until the expiration of all statutes of limitations for all claims that might be
21 brought upon the facts of this case or upon the litigation itself including malpractice
22 claims.

1 Notwithstanding this provision, counsel are entitled to retain one archival copy of
 2 all documents filed with the court, trial, deposition, and hearing transcripts,
 3 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
 4 consultant and expert work product, even if such materials contain confidential material.
 5

6 The confidentiality obligations imposed by this agreement shall remain in effect
 7 until a designating party agrees otherwise in writing or a court orders otherwise.

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 *E-signature authorized via email*

10 DATED: May 4, 2020

/s/ Kenneth R. Friedman

Kenneth R. Friedman, WSBA #17148

Friedman | Rubin

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12 Bremerton, WA 98337

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16 Attorney for Plaintiff

17 DATED: May 4, 2020

/s/ Mark S. Northcraft

18 /s/ Aaron D. Bigby

19 Mark S. Northcraft, WSBA #7888

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aaron_bigby@northcraft.com

23 Attorneys for Defendant SkyWest Airlines, Inc.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2
3 DATED: _____
4
5 HONORABLE ROSANNA MALOUF PETERSON
6 United States District Judge
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STIPULATED PROTECTIVE ORDER - 10 [4:20-cv-05014-RMP]
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1 EXHIBIT A
2

3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**
4

5 I, _____ [print or type full name], of
6 _____ [print or type full address], declare under penalty of perjury
7 that I have read in its entirety and understand the Stipulated Protective Order that was
8 issued by the United States District Court for the Eastern District of Washington on
9 _____, 2020, in the case of ***Cindy Dickson v. SkyWest Airlines, Inc., et al.***, Cause No. 4:20-cv-05014-RMP. I agree to comply with and to be bound by all the
10 terms of this Stipulated Protective Order and I understand and acknowledge that failure to
11 so comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item that is
13 subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order.
15

16 I further agree to submit to the jurisdiction of the United States District Court for
17 the Eastern District of Washington for the purpose of enforcing the terms of this
18 Stipulated Protective Order, even if such enforcement proceedings occur after
19 termination of this action.
20

21 DATED this _____ day of _____, 20____, at _____.
22

23
24 Printed Name:
25

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kenneth R. Friedman

kfriedman@friedmanrubin.com; knilson@friedmanrubin.com

SIGNED in Seattle, Washington on May 4, 2020.

/s/ Lilly B. Tang
Lilly B. Tang
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STIPULATED PROTECTIVE ORDER - 12 [4:20-cv-05014-RMP]
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